

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**IN THE MATTER AND  
ON THE PETITION OF:**

**Civil Action No. 5:14-cv-17175**

**VIRGINIA BRABBAN, as Administratrix  
of the Estate of WILLIAM T. BRABBAN, SR.  
for permission to settle a claim for damages  
resulting from the death of WILLIAM T. BRABBAN, SR.**

**PETITION AND APPLICATION OF VIRGINIA BRABBAN, ADMINISTRATRIX OF  
THE ESTATE OF WILLIAM T. BRABBAN, SR. FOR PERMISSION TO SETTLE  
FEDERAL TORT CLAIMS ACT CLAIMS FOR DAMAGES RESULTING FROM THE  
DEATH OF SAID WILLIAM T. BRABBAN, SR.**

**TO: The Honorable Judge of said Court:**

The petitioner respectfully represents and shows unto this Court as follows:

**I.**

The petitioner, Virginia Brabban, brings this petition pursuant to WV Code § 55-7-5 et seq. Virginia Brabban is the duly appointed Administratrix of the Estate of William T. Brabban, Sr., by Certificate of Appointment and Qualification of the Mercer County Commission dated June 23, 2011, a copy of which is attached hereto as Exhibit "A".

**II.**

These Federal Tort Claims Act (hereinafter "FTCA") claims are for damages resulting from the wrongful death of William T. Brabban, Sr. Plaintiff alleges that Dr. David Blaine, while acting as an employee, agent and servant of the United States, Department of Veteran's Affairs, at the Beckley VA Medical Center, negligently, recklessly and in gross disregard for the rights of William T. Brabban, caused injury to his right ethmoid sinus and skull base resulting

from passage of instrumentation from the nasal side of his ethmoid sinus into the intracranial cavity during a June 10, 2011 endoscopic sinus surgery. This negligent passage of instrumentation caused an intracerebral and intracranial hemorrhage, which ultimately caused Mr. Brabban's death. Plaintiff further alleges that Dr. Blaine negligently and recklessly failed to provide appropriate post-operative care to the decedent by failing to test for and recognize the intracranial hemorrhage and repair the same or immediately transfer the patient, thereby negating any chance the decedent had for recovery.

III.

The United States, Department of Veteran's Affairs (hereinafter "the VA" or "defendant"), employer and party responsible for the conduct of Dr. Blaine, has agreed to tender a total of Nine Hundred Fifteen Thousand Dollars (\$915,000.00) in compromise of the claims mentioned above for the benefit of the Estate of William T. Brabban, Sr.

IV.

The petitioner, Virginia Brabban, as the duly appointed Administratrix, and her attorney, Brian Ooten, have negotiated the aforementioned settlement. Said payment represents a full and complete settlement for all past, present and future injuries, damages and expenses against the VA.

V.

William T. Brabban, Sr. died intestate. The heirs of William T. Brabban are as follows:

Virginia Brabban – Wife

William T. Brabban, Jr. – Son

Sarah Riggs – Daughter

The petitioner further represents that \$7,800.00 of the \$8,642.84 in expenses incurred for the deceased's funeral at Memorial Funeral Directory, Inc. is still due and owing. A copy of the funeral bill is attached hereto as Exhibit "B".

VI.

Petitioner requests that fifteen percent (15%) of the net settlement proceeds after deduction for attorney fees and costs (\$107,812.84) be distributed to Sarah Riggs, the emancipated surviving daughter of the decedent, and that another fifteen percent (15%) of the net settlement proceeds (\$107,812.85) be distributed to William Brabban, Jr., as the emancipated surviving son of the decedent. Petitioner further requests that the remaining seventy percent (70%) of the net settlement proceeds (\$503,126.61) be distributed to her. Both Sarah Riggs and William Brabban, Jr. are in agreement with the distribution referenced above as is reflected by the signed Consents, attached as Exhibits "C" & "D". Lastly, petitioner proposes that the following payments be approved for attorney fees, costs and funeral expenses:

Attorney Fees (Statutory 20% as per the FTCA)	\$183,000.00
Memorial Funeral Directory, Inc.	7,800.00
Costs & Expenses	5,447.70

Petitioner believes the amount to be paid by the VA, as outlined above, is a reasonable settlement, and in the best interests of the Estate.

VII.

**WHEREFORE**, your petitioner respectfully prays for the following relief:

1. That her Petition be inspected by this Court and filed;
2. That this Court approve the settlement and distribution proposed herein on behalf of said Estate;
3. That the Court authorize your petitioner to take the necessary steps to effectuate a full release of The United States of America, Department of Veteran's Affairs.
4. That the Court authorize the petitioner to pay any attorney fees, costs and other expenses incurred as a result of the incident and wrongful death of the decedent as described herein; and,
5. Such other relief as this Honorable Court may deem just and proper.

A handwritten signature in cursive script, reading "Virginia Brabban", written in black ink.

**VIRGINIA BRABBAN, Administratrix of the  
Estate of WILLIAM T. BRABBAN, SR.**




VERIFICATION

STATE OF WEST VIRGINIA


COUNTY OF Mercer, to-wit:

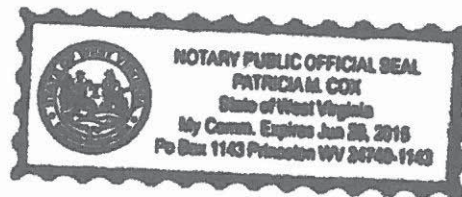
Virginia Brabban, being first duly sworn, deposes and says that she has read the foregoing **Petition and Application of Virginia Brabban, Administratrix of the Estate of William T. Brabban, Sr., for Permission to Settle Federal Torts Claims Act Claims for Damages Resulting from the Death of said William T. Brabban, Sr.** and is familiar with the contents thereof, that the facts as set forth therein are true, except as to the matters that are therein stated to be upon information and belief, in which event she believes them to be true.

  
VIRGINIA BRABBAN, Administratrix of the  
Estate of WILLIAM T. BRABBAN, SR.

Taken, subscribed and sworn to before the undersigned Notary Public in my said County on this the 28 day of May, 2014.

My commission expires: June 28, 2015.

  
Notary Public



WEST VIRGINIA:

IN MERCER COUNTY COMMISSION CLERK'S OFFICE, JUNE 22, 2011.

Upon motion of Virginia S. Brabban, sole heir and distributee of the estate of William T. Brabban, deceased, it is ordered that Virginia S. Brabban be and is hereby appointed as Administratrix of the estate of William T. Brabban, deceased.

Whereupon, Virginia S. Brabban appeared before the Clerk of said Commission and took the oath required by law as such Administratrix, and together with Travelers Casualty & Surety Company of America, as her surety, entered into and acknowledged a bond in the penalty of One Thousand Dollars (\$1,000.00), conditioned as required by law, which said bond is approved by the Clerk aforesaid and ordered to be recorded, and thereupon filed her affidavit showing the names of the distributees of said estate, their post office addresses, and their relation to the decedent.

Virginia S. Brabban, Administratrix of the estate of William T. Brabban, deceased, who being duly sworn, shall appraise the estate and make return thereof to the Clerk of the County Commission, as required by law.

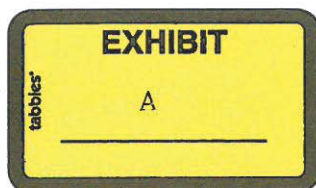
TESTE: Verlin T. Moye CLERK

STATE OF WEST VIRGINIA,

COUNTY OF MERCER, TO-WIT:

I, VERLIN T. MOYE, Clerk of the County Commission of the County and State aforesaid, do hereby certify that the foregoing writing is a true, correct copy of an Order, as taken from the records in my said office.

Given under my hand and Seal of said Commission, this the 23<sup>rd</sup> day of June, 2011.



Verlin T. Moye CLERK  
MERCER COUNTY COMMISSION  
D. McNamee A. Bragg DEPUTY

**Memorial Funeral Directory, Inc.**

654 Athens Road  
Princeton, WV 24740

**STATEMENT**

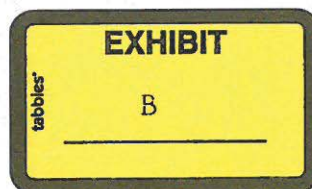
Date: April 2, 2013

To: Mrs. Virginia Brabban  
3724 New Hope Road  
Oakvale, WV 24739

Services for: Mr. William Thomas Brabban  
Service id: 15367  
Due Date: 5/1/2013  
Director: William S. Fredeking

Please return stub with your remittance to mailing address above. Amount \$ \_\_\_\_\_

<b>Date</b>	<b>Description</b>	<b>Amount</b>
06/20/11	Traditional	\$9,882.84
04/30/12	Payment	-\$300.00
06/12/12	Payment	-\$200.00
10/12/12	Payment/Virginia Brabban	-\$390.00
11/26/12	Payment/Virginia Brabban	-\$200.00
02/07/13	Payment/Va Brabban	-\$150.00
<b>Account Balance</b>		<b>\$8,642.84</b>



## CONSENT OF ADULT HEIR


I, Sarah Riggs, being one of two adult heirs and distributees of the Estate of William T. Brabban, Sr., do hereby consent to and expressly request that Virginia Brabban, Administratrix of the Estate of William T. Brabban, Sr., accept in full and final settlement of the claims accruing as a result of the death of William T. Brabban, Sr., the sum of Nine Hundred Fifteen Thousand Dollars (\$915,000.00). I further consent to the aforesaid Administratrix executing a full and final release of The United States of America, Department of Veteran's Affairs. I do further consent to the net settlement proceeds, after the payment of attorney fees, advanced expenses, medical and funeral bills, being distributed as follows:

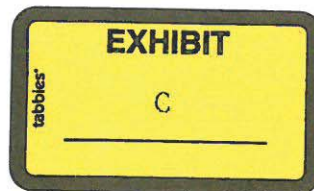
Virginia Brabban - \$503,126.61

William Brabban, Jr. - \$ 107,812.85

Sarah Riggs - \$ 107,812.84

Dated this 28 day of May, 2014.

  
\_\_\_\_\_  
Sarah Riggs





STATE OF WEST VIRGINIA,

COUNTY OF Mercer, to-wit:

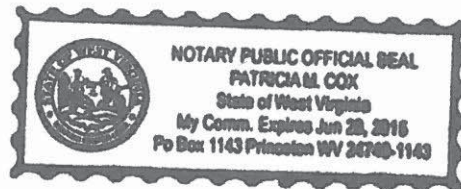
On this 28 day of May, 2014, before me personally appeared Sarah Riggs, to me known to be the person described herein, and who executed the foregoing instrument and he/she acknowledged that he/she voluntarily executed the same.

My commission as a Notary Public will expire on the 28 day of June 2015

\_\_\_\_\_.

Patricia M. Cox

Notary Public



## CONSENT OF ADULT HEIR

I, William Brabban, Jr., being one of two adult heirs and distributees of the Estate of William T. Brabban, Sr., do hereby consent to and expressly request that Virginia Brabban, Administratrix of the Estate of William T. Brabban, Sr., accept in full and final settlement of the claims accruing as a result of the death of William T. Brabban, Sr., the sum of Nine Hundred Fifteen Thousand Dollars (\$915,000.00). I further consent to the aforesaid Administratrix executing a full and final release of The United States of America, Department of Veteran's Affairs. I do further consent to the net settlement proceeds, after the payment of attorney fees, advanced expenses, medical and funeral bills, being distributed as follows:

Virginia Brabban - \$503,126.61

William Brabban, Jr. - \$ 107,812.85

Sarah Riggs - \$ 107,812.84

Dated this 21<sup>st</sup> day of May, 2014.

*William Brabban Jr*

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William Brabban, Jr.

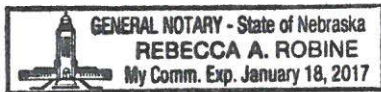


STATE OF Nebraska,

COUNTY OF Douglas, to-wit:

On this 21<sup>st</sup> day of May, 2014, before me personally appeared William Brabban, Jr., to me known to be the person described herein, and who executed the foregoing instrument and he/she acknowledged that he/she voluntarily executed the same.

My commission as a Notary Public will expire on the 18<sup>th</sup> day of January, 2014.



Rebecca A Robine  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**IN THE MATTER AND  
ON THE PETITION OF:**

Civil Action No. \_\_\_\_\_

**VIRGINIA BRABBAN, as Administratrix  
of the Estate of WILLIAM T. BRABBAN, SR.  
for permission to settle a claim for damages  
resulting from the death of WILLIAM T. BRABBAN, SR.**

**CERTIFICATE OF SERVICE**

I, the undersigned counsel for the plaintiff, do hereby certify that a true and correct copy of the foregoing **“PETITION AND APPLICATION OF VIRGINIA BRABBAN, ADMINISTRATRIX OF THE ESTATE OF WILLIAM T. BRABBAN, SR. FOR PERMISSION TO SETTLE FEDERAL TORT CLAIMS ACT CLAIMS FOR DAMAGES RESULTING FROM THE DEATH OF SAID WILLIAM T. BRABBAN, SR.”** was served upon the following individuals and counsel this 29<sup>th</sup> day of May, 2014, by depositing the same in the United States Mail, postage prepaid, to their last known business address:

Bill Klotzbucher, Esq.  
Department of Veteran's Affairs, Office of General Counsel  
810 Vermont Avenue, NW  
Mailstop 021B  
Washington, D.C. 20420

Sarah Riggs  
231 Path Lane  
Bluefield, WV 24701

William Brabban, Jr.  
11272 Northridge Drive  
Gretna, NE 68028

/s/ Brian L. Ooten  
\_\_\_\_\_  
Brian L. Ooten (WVSB #9358)